

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Candice L. Early,

Plaintiff,

-v-

Little Flower Children and Family Service of New York,

Defendant.

2:23-cv-2531
(NJC) (JMW)

MEMORANDUM AND ORDER

NUSRAT J. CHOUDHURY, United States District Judge:

On March 11, 2024, Plaintiff Candice L. Early’s (“Early”) motion for a default judgment was denied with leave to renew in compliance with the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York. (Elec. Order, Mar. 11, 2024.) On July 16, 2024, the Court ordered Early to file a renewed default judgment motion by July 31, 2024. (Elec. Order, July 16, 2024.) Early did not file a renewed motion or otherwise communicate with the Court. Therefore, on September 13, 2024, the Court ordered Early to show cause, by October 11, 2024, as to why this case should not be dismissed for failure to prosecute. (Order Show Cause, Sept. 13, 2024.) On September 23, 2024, Early filed a response stating that she “already submitted all the prevalent and supporting information” and “ha[d] nothing more to provide.” (ECF No. 14.) Upon review of the response and in light of Early’s pro se status, on September 25, 2024, the Court afforded Early “one final extension of time to file the renewed motion for default judgment” and set a deadline of October 30, 2024. (Elec. Order, Sept. 25, 2024.) The Court warned Early that “[f]ailure to file the renewed motion for default judgment by

October 30, 2024 will result in dismissal without further notice.” (*Id.*) The Order was mailed to Early at her address of record and has not been returned to the Court as undeliverable.

Nearly four months have passed and Early has not filed a renewed motion for a default judgment or otherwise communicated with the Court regarding this action. The Court therefore considers the five factors that must be weighed when determining whether to dismiss a case for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure (“Rule 41(b)”), as set forth in *Baptiste v. Sommers*:

(1) the duration of the plaintiff’s failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.

768 F.3d 212, 216 (2d Cir. 2014).

Balancing these five factors, it is appropriate to dismiss this action without prejudice for failure to prosecute under Rule 41(b). Given Early’s failure to respond to the Court’s September 25, 2024 Order or to otherwise communicate with the Court in the intervening four months, it appears that Early has abandoned this case. Early has failed to comply with this Court’s Order by failing to file a renewed default judgment motion by October 30, 2024. (See Elec. Order, Sept. 25, 2024.) The Court’s September 25, 2024 Order placed Early on notice that such failure would result in dismissal of this action. (*Id.*) Defendant has not appeared in this action, and so prejudice to Defendant by further delay would be limited. Finally, dismissal without prejudice is not an adjudication on the merits and balances the Court’s interest in managing its docket with Early’s interest in being heard.

Accordingly, the Complaint is dismissed without prejudice pursuant to Rule 41(b). The Clerk of the Court shall enter judgment accordingly and close this case.

The Clerk of the Court shall mail a copy of this Memorandum and Order to Early at her address of record and shall also record such mailing on the docket.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore IFP status is denied for the purpose of any appeal.

See Coppededge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: Central Islip, New York
January 27, 2025

/s/ Nusrat J. Choudhury

NUSRAT J. CHOUDHURY
United States District Judge